

## **EXHIBIT 22**

Transcript of conference in regard to pending litigation between  
United States and water users of the Walker River, Nevada  
dated January 25, 1926

*Copy*

BEFORE THE  
SECRETARY OF THE INTERIOR

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CONFERENCE IN REGARD TO PENDING LITIGATION BETWEEN  
THE UNITED STATES AND WATER USERS ON THE WALKER  
RIVER, NEVADA, INVOLVING WATER RIGHTS APPURTEN-  
ANT TO THE WALKER RIVER INDIAN RESERVATION.

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Washington, D. C., January 25, 1926, 2:00 P. M.

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Among those present were the following:

Hon. Hubert Work, Secretary of the Interior.  
Hon. John G. Barent, Attorney General of  
the United States.  
Hon. E. C. Finney, Assistant Secretary of  
the Interior.  
Hon. John H. Edwards,  
Hon. B. M. Parmenter, Assistant Attorney General.  
Hon. Charles E. Burke, Commissioner of Indian  
Affairs.  
Hon. A. J. Springmyer, United States Attorney  
for the District of Nevada.  
Hon. Samuel E. Arents, Member of Congress for  
Nevada.

The following persons spoke on behalf of the water users:

Mr. Henry C. Dukes, Secretary, Walker River  
Irrigation District.  
Mr. George B. Thatcher, Attorney for the An-  
telope Valley Land & Water Company.  
Mr. George L. Sanford, Attorney for the Union  
Livestock & Cattle Company.  
Mr. Henry Thurtell.

*File  
G.A.I.*

SECRETARY WORK: The Attorney General will open the hearing.

ATTORNEY GENERAL SARGENT: Gentlemen, so far as I am concerned, I want to be informed as to what it is you think we are not doing in these cases and what we ought to do, and if there is anybody who can tell why, I would like to hear from them.

HON. SAMUEL S. ARMENT (Member of Congress from Nevada):  
Being Congressman from this district, I try to represent the whole State and farmers in the Walker River Irrigation District. I used water out of the West Walker, having lived in this section of Nevada for 20 years, and some two months ago the Directors of the Walker River Irrigation District brought to my attention the necessity for bringing to the attention of the Attorney General and the Secretary of the Interior the actual facts as they exist on the Walker River. A short time ago—less than a month ago—I received word that a stipulation was presented to the attorneys of the Walker River Irrigation District that must either be signed or that suit would be prosecuted, and we knew what that meant; and the conference is being held today with the Interior Department for the purpose of presenting the facts to you gentlemen, with the hope that something other than a lawsuit will be the outcome. I do not intend to present the facts, but will leave that to the members of the Irrigation District proper and the attorneys representing them.

MR. HENRY C. DUKES (Secretary of the Walker River Irrigation District): I have been Secretary of the Walker River Irrigation District since about 1919. I have been a resident of this territory for some 18 years. I have had to do with water in the District as Water Commissioner and as farmer, besides being Secretary of the District.

This watershed or region of Walker River contains an area of irrigable land of about 200,000 acres, of which about 110,000 acres are now under cultivation. About 70,000 acres of that 110,000 is within the Walker River Irrigation District and lies within the State of Nevada; the other 40,000 acres is within the State of California.

The Walker River Irrigation District was formed because of the necessity of storing water to supplement the water supply in the late summer. Ordinarily, the stream being a torrential stream from summer melting of snows, gets down to its lowest point, and a very low point, about July 15th, so that only very early priorities can be served after that time and it was necessary to store the river waters and the summer torrents to lengthen the irrigation season for the lands then under cultivation and now under cultivation, and to provide for the---

ATTORNEY GENERAL SARGENT: When you first spoke of the end on July 15th you meant the natural flow?

MR. DUKES: The natural flow, not artificial.

(Continuing) ---lands that have been under water also besides this on this river.

In 1902 a suit was instituted between some of the upper users and finally included all the lower users within the State of Nevada. That suit consumed some 17 years, it being settled (the decree being signed) in March, 1919. During that time the suit was watched more or less by attorneys of the United States. They were asked, and in fact implored, to enter that suit and to have a decree made fixing the rights of the Government for the Walker River Reservation. Findings of fact were made as to the irrigated lands in the Indian Reservation.

ATTORNEY GENERAL SARGENT: Just a minute. "Fix the rights of the Government." In what is the Government interested, as you understand it?

MR. DUKES: As I understand it, the Government is interested on account of the Piute tribe of Indians on the Walker River Indian Reservation.

ATTORNEY GENERAL SARGENT: Is their land a part of the 110,000 acres that you speak of?

MR. DUKES: Well, I think so; the 110,000 acres, of course, is in round numbers.

ATTORNEY GENERAL SARGENT: I understand. I supposed you were speaking in round numbers.

MR. DUKES: Because there are approximately 2,000 acres on the Walker River Reservation under irrigation.

ATTORNEY GENERAL SARGENT: So that is a part of the total you mentioned as being---

MR. DUKES: Yes.

ATTORNEY GENERAL SARGENT: ---as being irrigable land?

MR. DUKES: Yes, sir. As I say, the Government did not finally become a party to that side of the suit, although the findings of fact are expressed in that decree.

ATTORNEY GENERAL SARGENT: Who were the parties to that suit, generally?

MR. DUKES: The title is Pacific Livestock Company v. D. B. Hickey et al. It includes all the irrigators in the State of Nevada and some in the State of California.

ATTORNEY GENERAL SARGENT: But the Government is not a party?

MR. DUKES: Not finally.

ATTORNEY GENERAL SARGENT: Was it ever?

MR. DUKES: In so far as submitting proofs and facts, yes.

ATTORNEY GENERAL SARGENT: It was not a party?

MR. DUKES: As a technical party, --I did not say that.

Perhaps the physical situation in this territory will be enlightening, and it is covered by this map. (Referring to a map.)

Along this line here is the summit of the Sierra Nevada Mountains. Here is a line between the watershed of the Carson River and the Walker River, this being the Walker River watershed. The mountains in this territory are quite high---from 10,000 to 13,000 feet above sea level---gradually dropping down to Walker Lake which has an elevation approximately of 4200 feet.

ATTORNEY GENERAL SARGENT: This Walker Lake is an inland sea; there is no outlet?

MR. DUKES: No outlet.

ATTORNEY GENERAL SARGENT: As I have understood.

MR. DUKES: You might call it a dead sea.

ATTORNEY GENERAL SARGENT: So the river comes to an end there.

MR. DUKES: Immediately within a few miles of the peaks these rivers begin, and irrigated lands. There are branches of the river, the East and the West Fork. Upon the West Fork and about 18 or 20 miles on a direct line, there is Antelope Valley which has now an irrigated area of approximately 30,000 acres. Immediately below Antelope Valley the mountains constrict. There is a rim rock that brings the return waters to the surface. That valley is at an elevation of approximately 5,200 feet above sea level, dropping into Smith Valley with an elevation of approximately 4,700 feet. Leaving that valley the territory is again constricted by the mountains, rim rocks bringing up the water, and

dropping into Mason Valley from the upper part of which the two rivers join, the east and West Forks. Going back to the source of supply on the East Fork, as I said before, within about 10 miles the irrigated lands begin at Bridgeport Valley. That valley has an elevation of 6,500 feet and has an irrigated area of approximately 20,000 acres. It flows from Bridgeport Valley through a long narrow valley not wider at any place, I believe, than one mile of irrigated lands. It joins the West Walker, as noted before, in Mason Valley. Mason Valley is again constricted by mountains, and rim rocks bring up return flow. The river then flows down through the so-called Shearer's Canyon of about 20 miles to the Walker River Reservation. Each of these drops between these valleys is at least 200 feet. It brings the return flow in. The ordinary water supply for this territory is approximately 300,000 acre-feet. That, however goes up and goes down. We have known it as high as nearly 500,000 acre-feet, and as low as 5,400 acre-feet.

The property involved in this contention is undoubtedly valued at something like \$15,000,000—the lands alone. Besides that, of course, are the improvements of various sorts—towns, villages, improvements on the ranches—and also the dependent cattle industry. The comparison of lands, as I understand it, between the United States and the settlers is approximately



200,000 acres to 2,000 acres, with a possibility of an increase.  
I believe of 2,000 to 10,000 acres.

ATTORNEY GENERAL SARGENT: Increase of Government?

MR. DUKES: Of Government land.

ATTORNEY GENERAL SARGENT: So that it is anywhere between  
200,000 and 2,000 and 200,000 and 10,000?

MR. DUKES: There is a possible increase of the white  
settlers, but not such a large proportionate increase.

I believe that is all I have to say.

ATTORNEY GENERAL SARGENT: Are you a lawyer?

MR. DUKES: No, sir.

GEORGE B. THATCHER, attorney for the Antelope Valley Land  
& Cattle Company: The Antelope Valley Land & Cattle Company  
owns about 35,000 acres of land upon the territory of the Walker  
River, about 7,000 at Bridgeport, about 14,000 at Antelope Valley,  
and about 15,000 on Mason Valley. Now, if I may go back only a  
little bit, in the first place there is now pending the suit of  
the United States v. The Walker River Irrigation District and  
all users on the stream system generally. The Government's con-  
tention states that because of the creation of the Indian Reser-  
vation they have a water right for 10,000 acres of land. The  
reservation is near Walker Lake; in other words, at the mouth of  
the stream.

ATTORNEY GENERAL SARGENT: The lowest land.

MR. THATCHER: The lowest of any of the lands. It follows that private ownership clear down at the bottom. This suit was brought a couple of years ago and is now being prosecuted. What we want to do is to get out of that lawsuit and save the expense and endeavor to adjust and compromise the difficulties between the Government and the Indians. Now, back in about 1901 a suit was brought, a general adjudication suit, to determine all the rights on the stream system.

ASSISTANT SECRETARY FINNEY: Not "between the Government and the Indians."

MR. THATCHER: No, this is a general adjudication suit.

ATTORNEY GENERAL SARGENT: Between whom?

MR. THATCHER: Brought by the Pacific Livestock Company against D. B. RICKET; and then everybody was brought in as a party to the suit--that is, the first suit.

ATTORNEY GENERAL SARGENT: That is, they were on both sides, the people who are now---

MR. THATCHER: The defendants. And that suit dragged its way for about 18 years, and numerous pleadings and a great many demands were submitted to Mr. Henry Thurtell as a Master, and he made a very thorough investigation of the stream and the stream system, and made findings. He took evidence. He was then State Engineer of the State of Nevada. He was agreed upon as Master. He made his findings and various other stipulations; and finally,

using the Thurtell findings as the basis, in 1918 the matter was submitted to Judge Norcross as a Special Master, and he brought in the final findings and those findings were thereupon incorporated into a decree of the Federal Court, Judge Dooling acting as Judge, and a final judgment and decree was entered.

Now in the investigation made by Mr. Thurtell he investigated also, the same as he did everybody else's right, the rights of the Indians in Walker River. Mr. Thurtell is not positive exactly as to whether or not they were represented by counsel or anyone from the Department in presenting their proofs; but he did take evidence and proofs were submitted to him by the Indian Agents or somebody. He found their rights on that stream, and they were incorporated in the findings.

Repeatedly after that an endeavor was made by the parties in that litigation to get the Government to come in and intervene in that suit and have its rights determined at the same time that all the other rights were. The settlers realized that there were rights for the Indians, and they wanted to settle this litigation and get it out of the road, because it cost many thousands of dollars and a great deal of time. The Government refused—or at least never would appear in that action.

Now, that is about the situation. In the meantime the Walker River Irrigation District was created some four years ago.

ATTORNEY GENERAL SARGENT: Let me ask you, are the respective rights among the people who now constitute the Irrigation District---the defendants in the pending case---are they all settled?

MR. THATCHER: As between themselves?

ATTORNEY GENERAL SARGENT: As between themselves.

MR. THATCHER: Yes, except some in the State of California who are not parties to that decree; but I think that is not a very substantial amount, or in number.

ATTORNEY GENERAL SARGENT: However, that would be a question between this Irrigation District and those people in California.

MR. THATCHER: And between the Government. But I think we will have no difficulty in having them come in and submit their proofs, and if we can get the Government likewise to take the position that we can reach an adjustment of this matter---

ATTORNEY GENERAL SARGENT: Why the Government interested in the controversy between the Walker River Irrigation District and the people in California?

MR. THATCHER: Well, it is all part of the same system and everybody is necessarily interested in everybody else's right, and all these other people in California are now parties to this litigation.

ATTORNEY GENERAL SARGENT: Why is the Government interested so far as the controversy between the Irrigation District and the

people in California is concerned?

MR. THATCHER: The Government is interested if they are representing Indians and the Indian rights in every other appropriator's right on a stream system.

ATTORNEY GENERAL SARGENT: Is it claimed that there are any appropriators that are prior to the Indians?

MR. THATCHER: Yes, a great many of them claim to be prior to the Indians.

ATTORNEY GENERAL SARGENT: Either in your District or in California?

MR. THATCHER: Yes, a great many claim to be prior to the Indians. As a matter of fact it is claimed. The Thurtell findings give the earliest priority, so far as Indians are concerned, as early as 1868 and other priorities following that time. Now, the Thurtell findings showed an irrigated area in the reservation of about 1,900 acres. That may have increased since that time to 2300 or 2500, I am not sure.

ATTORNEY GENERAL SARGENT: That is what has been spoken of as 2,000 in round numbers?

MR. THATCHER: Yes. Now, the Government, if we understand their contention correctly, is making the same contention here that they made on the Truckee, that because of the Government ownership of the land in setting aside of a reservation and taking a date of 1859 and claiming likewise not the 2,000 acres which

have been irrigated but 10,000 acres of possible irrigable or arable land; and that is the contention, and that is the serious part of this situation. The contention is here made on behalf of the Government in the suit pending ~~the~~ the Indians, without regard to when they first commenced their irrigation works or when they cultivated their land, because at some time that reservation was set aside and determined to be set aside in 1859, have a prior right for 10,000 acres of land dating back to 1859. Have I made clear the contention of the Government?

ATTORNEY GENERAL SARGENT: I understand.

MR. THATCHER: That is the situation that we face. Now, what we are asking is that you measure the Indian's rights by the same yard stick that you measure the rights of the others; that you fix and determine his rights; and if their rights are earlier and they actually irrigated the land prior to 1865 according to the Thurtell findings, it is entirely satisfactory to us to have the proof submitted and have any right that the Indians have as to everything properly and finally determined; but we do not want to take time and have to litigate this whole matter all over again.

ATTORNEY GENERAL SARGENT: The contention between the defendants and the Government is as to whether the Indian lands are entitled to water for 2,000 acres or for 10,000.

MR. THATCHER: For 10,000.

ATTORNEY GENERAL SARGENT: That is all there is to it.

MR. THATCHER: I think so, and the date of the priority.

ATTORNEY GENERAL SARGENT: Regardless of date the contention is as to whether they are entitled to it, that is the point.

MR. THATCHER: Yes, sir.

ATTORNEY GENERAL SARGENT: As to how much, that is another thing?

MR. THATCHER: Yes, sir.

ATTORNEY GENERAL SARGENT: I am just getting at what the issue is. That is the issue?

MR. THATCHER: Yes, sir.

Now, the Walker River Irrigation District was created by reason of an act of the legislature. It is a quasi-public, yet at the same time practically a private, concern so far as the irrigators themselves are concerned. It is not supported by the State in any respect. They pay for it. They have authorized a bond issue of about \$918,000. They have actually spent in the development of headwater storage \$800,000. This problem can be solved if the Government will do just the same as the settler does—provide storage for the Indians. That situation can easily be worked out. It is entirely feasible from an engineering standpoint to provide storage just above the reservation to take care of the rights of the Indians.

ASSISTANT SECRETARY FINNEY: The works of your District as constructed are not of sufficient capacity to store water for your lands and the Indian lands.

MR. THATCHER: Well, I don't know but they might be able to furnish water for Indian purposes, but the Government has never contributed anything toward the building of the reservoirs which were built in the District.

ATTORNEY GENERAL SARGENT: There are certain surplus waters that are going to waste because of lack of storage?

MR. THATCHER: Yes, sir; as a matter of fact, as I understand it, right now throughout the winter in the neighborhood of 40 second feet per day runs into Walker Lake. That is about 80 acre feet per day, and that would amount to 2,400 acre feet in a month. Now, that runs, let us say, from September till April. That would store a considerable amount of water. In addition to that, if you had storage that would take care, say, of 10,000 acre feet if that could be stored during the winter time. Furthermore, then the spring runoff generally gives (that is, in an ordinary year) considerable flood waters and they are available for storage from April until July. Now, you could store in April, draw it off for early irrigation, and then store again during the flood water season, and get practically 25,000 acre-feet. That with the amount of water that naturally comes would easily irrigate all of the 10,000 acres possible to be irrigated in that



District. I ought to say that there are figures available that that would cost about \$165,000 or \$175,000. If that is for the benefit of 2,000 acres it is too much, it is a high storage cost, as Mr. Secretary Work knows; but at the same time if the ultimate claim and contention of the Government, and their ultimate intention is to cultivate and put water on that reservation to cultivate 10,000 acres of land, it would be about \$16 an acre, which is very cheap and would settle this whole situation.

Our suggestion on this matter is that we do not want to go to the expense of engineering and legal costs if we can settle the controversy between us. Now, if this case could be continued—not pressed for the immediate future—until some consideration could be given to the question of storage, and in the meantime probably make some arrangement so that we would permit, or agree that a certain amount of water would come to the reservation, I think an arrangement could be made and we could see how things might work.

ATTORNEY GENERAL SARGENT: Well now, let me find out just a little. Your proposition is that the Government should invest, we will say, \$160,000, (I think that is the sum you named) in more storage than now exists on the river. That is the first thing.

MR. THATCHER: Yes, sir.

ATTORNEY GENERAL SARGENT: And that is for the sake of affording ample water for the Indian Reservation.

MR. THATCHER: Yes, sir.

ATTORNEY GENERAL: And that if that is done it will afford that water.

MR. THATCHER: Yes, sir.

ATTORNEY GENERAL SARGENT: Now, whether the Government should do that or not depends on whether it already owns that amount of water for the Indians or not, doesn't it?

MR. THATCHER: Yes, it does. That would naturally follow. If the Indians have no water right, of course the Government would not expend any money for their storage.

ATTORNEY GENERAL SARGENT: Is it claimed on behalf of your clients that the Government has no water?

MR. THATCHER: No, sir. No, we concede that the Government has water. We think that they ought to have water, and have it just the same as we have it—measured by their priority of appropriation and beneficial use; that you should not apply the doctrine of sovereignty for the benefit of the Indian and then say that the patentee who bought land from the Government and settled the country is to have his rights subordinated to that right and applied according to the doctrine of appropriation. That is the substance of our contention; but we are in favor very

much of seeing the Indian reservation developed, and that means more crops. It means a better country for everybody. We sympathize with the Indian view, just as well as we do with the settler, but we do want it measured in the same way and by the same standard.

I think that is all that I have to say unless somebody wants to ask any questions.

ATTORNEY GENERAL SARGENT: In your project as you have it in mind now, who do you contemplate is going to pay the expense of the new storage?

MR. THATCHER: That is something that we are not informed about, Mr. Attorney General, so far as the Indians are concerned.

ATTORNEY GENERAL SARGENT: Well anybody. For whose benefit do you take it to be?

MR. THATCHER: I think it is for the benefit of the Indians that the Government should do just what the settler has done; the settler has gone out and he has developed all of this; he has put in his ditches; he has irrigated this land; he is spending money in drainage; and he has now put in \$800,000 in storage; he felt it necessary to insure himself a water right and to tax himself to the extent of \$800,000.

ATTORNEY GENERAL SARGENT: I suppose his land is worth that much more.

MR. THATCHER: Yes.

ATTORNEY GENERAL SARGENT: So that that is an investment for the benefit of his land.

MR. THATCHER: And I think that would be an investment for the benefit of the Indian lands.

ATTORNEY GENERAL SARGENT: Yes, but I am getting at the legal side of it. If the Indian land is entitled to irrigation--- the whole of it---then this investment would be for the benefit of the settlers, wouldn't it?

MR. THATCHER: If the Indian is entitled---it deprives the settler of water which is taken for the Indians. We won't get any place---I do not think we will ever agree as to the Irrigation District and the defendants are never going to agree as a matter of law to the contention of the Government. We do not want to get into any discussion.

ATTORNEY GENERAL SARGENT: Where is there any loss in connection with the determination of that question.

MR. THATCHER: Well, if we have such litigation we do not know what other things we are going to have to litigate. Take, for instance, on the Truckee. I am not going to talk on the Truckee. We got into a friendly litigation. It was merely a piece of friendly litigation with the Government.

ATTORNEY GENERAL SARGENT: I do not think this will be reversed.

MR. THATCHER: No, sir; not at all.

ATTORNEY GENERAL SARGENT: This appears to be a clean cut issue as to how much water the Indian land is entitled to.

MR. THATCHER: Yes, sir.

ATTORNEY GENERAL SARGENT: And what I am asking is why is there any fear of local loss in connection with the determination of that question.

MR. THATCHER: Well, I know, for instance, if the pleadings in this case are not such as to lead us directly to raise that issue by a demurrer, for instance, or a motion to dismiss, if we could do that we might get some place.

ATTORNEY GENERAL SARGENT: Why don't you answer and assert it yourselves?

MR. THATCHER: We will probably assert it, but it will just leave the question to be tried.

ATTORNEY GENERAL SARGENT: What is the danger about the trial so far as time is concerned?

MR. THATCHER: The cost. Everybody will have to come in there and submit their rights and prove them.

ATTORNEY GENERAL SARGENT: The determination of that question.

MR. THATCHER: Yes, I think that and every other question.

MR. SPRINGMYER: May I concede that because the Government in its bill of complaint as amended admits that the rights of the defendants are as here found in this suit to which Mr. Thatcher has referred.

ATTORNEY GENERAL SARGENT: You mean their relative rights?

MR. SPRINGMYER: Yes, and it accepts them as between themselves.

MR. THATCHER: That water suit is something nobody knows what turn it is going to take, Mr. Attorney General.

ATTORNEY GENERAL SAROENT: Isn't the question here, as you have stated the matter, isn't it whether the Government because of its Indian lands is entitled to have that land all irrigated? Isn't that---

MR. THATCHER: That is the legal question that is presented. If we can get the issues made properly on the pleadings probably that could be submitted; but I am not sure that they are going to stand on that kind of a proposition.

ATTORNEY GENERAL SAROENT: Why, if that is the question that is to be tried, is it necessary to delay trial of it at present, in the present situation?

MR. THATCHER: The preparation of those suits costs money, and if we could just try that one legal issue there would be no necessity for delay. Otherwise if we can arrange it we do not want to go to the expense of employing experts, and attorneys and going to all of the expenses necessary to prepare for a law-suit of that kind.

ATTORNEY GENERAL SAROENT: You mean the trial.

MR. THATCHER: Yes, the trial of all of the issues. Now, Mr. Attorney General, I can give you an idea of how the settlers

feels out there on these lawsuits. For instance, take the Truckee. That suit was pending for a great number of years; that suit was on for a great many years, and the costs to the Fallon Reclamation Project were \$85,000. Besides that they have \$30,000 assessed as Master's fees, and additional cost by the Federal court—divided up—and the Lord knows how much money spent to employ experts, and we do not want to prepare for one of these things if we can stipulate or agree.

ATTORNEY GENERAL SARGENT: I can see how the trial of a kind of suit that you are talking about would be expensive.

MR. THATCHER: We don't know what kind of a turn it is going to take, and if I am preparing for a lawsuit I am going to prepare for any kind of an eventuality that will come up in the trial, and I think anybody in the defense of his rights would have to do the same; and what we are trying to get at is some adjustment of the case. Of course if the Government is going to stand on the Winters decision, and the theory of the Winters decision, we should quit. If the Government is going at the thing for the benefit of the Indian by appropriation and beneficial use, I think we could work out a stipulation that would be satisfactory.

ATTORNEY GENERAL SARGENT: Let me ask you another thing. Of course when Congress comes to consider this matter of an appropriation for the extra storage they will want to know whether it

is for the benefit of the Indian or for the benefit of the Irrigation District.

MR. THATCHER: They probably will, yes.

ATTORNEY GENERAL SARGENT: And they might appropriate it for the benefit of the Irrigation District, and they might appropriate it for the benefit, of the Indian, or they might come to the conclusion that it was a good thing to do for the benefit of everybody; but the first thing that the committee of Congress and everybody asks would be, "What is the real situation here as to who owns this water right?" won't they?

MR. THATCHER: I think they will.

ATTORNEY GENERAL SARGENT: How can we determine that except to try it out?

MR. THATCHER: Well, I don't know that you can, except that you can see that any lawsuit is expensive to the Government and to the settlers, and as a matter of compromise and adjustment this policy has been agreed upon.

SECRETARY WORK: Isn't the first question, Mr. Attorney General, that comes up whether or not when the reservation was set aside it carried with it the rights to prior use of water?

ATTORNEY GENERAL SARGENT: I understand, Mr. Thatcher to understand that is just the question.

SECRETARY WORK: Undoubtedly that is the first thing to decide, whether by arbitration or lawsuit, whether the water went



with the reservation; and if it is decided that it does the Indian ought to have it, if it did not it becomes a question of prior use.

MR. THATCHER: That is so. If it comes to the question of prior use then it will be essential to build this reservoir for the benefit of the Indians if you expect to irrigate the lands.

ATTORNEY GENERAL SARGENT: And this highly expensive trial they speak of as determining relative rights is facing you?

MR. THATCHER: Yes.

ATTORNEY GENERAL SARGENT: But that is not facing us in the determination of this question which the Secretary asks you and about which I asked you---as to whether the right to so much water on the whole 10,000 acres went along with the first appropriation---I mean the appropriation as to the reservation.

MR. THATCHER: Taking the pleadings in their broad form, the whole matter can be---it can be brought into that kind of a situation.

MR. ARNETT: When I brought this to the attention of yourself, Mr. Parmenter and Mr. Burke, Mr. Secretary, it was understood that this question that has just now been decided in your mind would be pushed back a little and the question of fact---the question of these settlers coming in good faith on this land and proving to the Government before they could get a title to a homestead that there was enough water to go on that land;

that the Indians over a period of pretty near 60 years have in this period put under cultivation 2,000 acres---and I was in hope, and I never would have called this conference if I thought that some good could not result from this conference and that, for the time being at least, the question of the Winters decision on the right to water for 10,000 acres for the Indians would not be backed up for a little while and give you a chance to discuss---

ATTORNEY GENERAL SARGENT: Don't you think we have got the thing entirely clarified?

MR. ARNETT: It is, from a legal standpoint. Yes, Mr. Attorney General; but it looks rather dark to me.

ATTORNEY GENERAL SARGENT: You are a Congressman. Let me ask you: You are going to be called on to vote---soon you will be called on to vote whether the Government shall appropriate \$150,000 to build some more storage.

MR. ARNETT: Yes, sir.

ATTORNEY GENERAL SARGENT: And when that question comes up don't you want to know whether the Government already owns the right to that water or not?

MR. ARNETT: I do; but can I, a member of the Irrigation and Reclamation Committee, and a member of the Public Lands Committee---you will never hear any discussion on the floor of that House of anything except the beneficial use of water. You

will not hear anything else among the Members of Congress and in the Committees.

SECRETARY WORK: The beneficial use of water.

MR. ARNETZ: To anyone who takes up land, whether it is the Indians or the white settler.

ATTORNEY GENERAL SARGENT: Before you vote on that question don't you want to know whether you are voting to provide some water that the Government already owns or not?

MR. ARNETZ: I certainly do.

ATTORNEY GENERAL SARGENT: That is just what we---

MR. ARNETZ: But the point in my mind is as to the question of beneficial use. I can not change my mind at present regarding land that was not put under cultivation and this land could remain over 50 years and the white settlers came in there and built all their improvements, and you could take the water away from them and put it on the Indian ground. It does not seem just.

ATTORNEY GENERAL SARGENT: Would you vote to appropriate \$150,000 to provide water that the Government already owns?

MR. ARNETZ: I have to say this: That if you have made the Indians a promise, if you have set aside 810,000 acres of irrigable land, and during 60 years they have put 2,000

acres under cultivation and have given them the promise that they are going to have water and at the same time you have white settlers come in here and locate this ground I would say that unless you intend to give them a full promise you would hold or withhold giving them sufficient storage.

ATTORNEY GENERAL SARGENT: Let me ask you this. You don't want to answer my question.

MR. ARETZ: I do, Mr. Attorney General---not directly, no, sir; because I can not say yes or no to this.

ATTORNEY GENERAL SARGENT: Assume that you are Chairman of the Committee in the House which has this matter under discussion, almost the first thing you would ask advice as to whether the Government has a right to the water that is to be provided by this appropriation.

MR. ARETZ: Yes.

ATTORNEY GENERAL SARGENT: And you would expect the Department of Justice to answer your question?

MR. ARETZ: I would; yes, sir.

ATTORNEY GENERAL SARGENT: Well, how are we going---

MR. ARMENTZ: I think in every case---

ATTORNEY GENERAL SARGENT: ---to determine? It is an open question. Mr. Thatcher says quite superior lawyers say nothing. How can you proceed safely---either you or the Department of the Interior or ourselves---until that question is determined first?

MR. ARMENTZ: For the simple reason that almost daily on the floor of the House come up questions of a similar nature. There is a question that came up on the floor of the House this morning as to whether \$500,000 mentioned in the appropriation bill for a metal clad blimp, or a lighter-than-air ship, should be appropriated by the House. You say that should go to the Committee that has under its consideration Navy matters; and if the Attorney General brings an absolutely new scheme of things here where beneficial use does not apply I would question him as well as I would question anything else.

ATTORNEY GENERAL SARGENT: How can I advise you as to whether the Government already owns the right to that water until it has been determined in a court? It is a question on which lawyers of good judgment, good education, sound legal advisors, differ.

MR. ARMENTZ: That is true. That is true.

ATTORNEY GENERAL SARGENT: How can we safely---any branch of the Government---act in this matter until that question is determined? You just tell me how?

MR. ARENTZ: The physical characteristics of this river are sufficient to give the Indians all the water they need for the land now under cultivation, and if stored more than enough for the 8,000 additional acres remaining.

ATTORNEY GENERAL SARGENT: That is not the question that I asked you. I ask you how can we on a question on which lawyers differ, and when it comes to the large amount of money that is going to be spent, how can we say what the law is--- whether the Government already owns it or not---except to have it determined?

MR. ARENTZ: I think possibly the mind of a layman is entirely different from that of a man who has been trained in the law. That is possibly the only way that I can answer it.

ATTORNEY GENERAL SARGENT: You are a business man. When you are going into a project you consult your lawyer as to what your rights are, don't you?

MR. ARENTZ: Yes sir.

ATTORNEY GENERAL SARGENT: Now here is a proposition, a business proposition, and you, a layman, consult your lawyer, the Department of Justice, as to what your rights are. Now, those rights, it appears from the discussion here, there is a question both ways. Men of good education, as I say, sound lawyers, disagree.

MR. ARENTZ: I recognize that.

ATTORNEY GENERAL SARGENT: Why should not that matter be

settled some way, so that there is not any doubt what the rights are going to be in the future, before you advise about the matter?

MR. ARMENTZ: If this matter could be settled as simply as it appears to you but not to the lawyer of education---not necessarily the experience that you have, not possibly the same education, but a man who has had experience in water litigation--- if Mr. Thatcher does not think this matter can be settled just by the Federal Judge deciding the case, it seems to me that we are going to a long-drawn-out lawsuit.

ATTORNEY GENERAL SARGENT: I said it would be a question that could be settled.

MR. ARMENTZ: If certain things did not occur---if we do not have to have a long-drawn-out case to take care of eventually. If you did not do this or you did not do that.

ATTORNEY GENERAL SARGENT: Mr. Thatcher, did I misunderstand what you said?

MR. THATCHER: I said this: That in the present state of the pleadings I would not feel that I---

ATTORNEY GENERAL SARGENT: I asked you whether this matter could not be determined without a long-drawn-out lawsuit--- determined by the court. Never mind about the present state of the pleadings. That is not what I am talking about.

MR. THATCHER: I think you and I could sit down and prepare the pleadings in this case to determine that question.

ATTORNEY GENERAL SARGENT: Don't you think that can properly be---

MR. THATCHER: Yes, sir; I think that question can just as well be determined.

MR. ARMENTZ: I acquiesce absolutely to the statement of two gentlemen.

SECRETARY WORK: Assuming that this water went to the Indians when the reservation was set aside, and that it belongs to them as a part of the reservation---if that is a fact---then I have no right to give that water, or the use of it, away, have I? I would like to know Mr. Thatcher's views on that. I would not think so.

MR. THATCHER: I get your idea that if this belongs to the Indian you have no right to stipulate it away.

SECRETARY WORK: If the water came to the Indians with the reservation when it was ceded, then I as representing them have no right to give that water away? That is equivalent to prior application, isn't it?

MR. THATCHER: In other words, this would be a question for Congressional action.

SECRETARY WORK: I was just leading up to this. I do not know myself whether that is right or not. Would not it be proper procedure for me to ask the Attorney General whether or not that is a fact and let him render an opinion to guide me. If he says the water came with the reservation and belongs to it---that the cession is equivalent to prior use---that ends the matter so far as that is concerned. If he says the water is a thing apart and not a feature of the reservation as set aside, then



I would have to determine the question of prior application. It comes back to the first proposition always in my mind whether the water is a part of the reservation or whether it should be considered apart from it; and if I ask the Attorney General for his opinion as to whether or not the Indians have prior right to that water because if it went with the reservation (assuming that there was no application of it above there) and he decides that that is a part of it, that settles the matter, doesn't it?

MR. THATCHER: Yes, sir. On the other hand the Attorney General might miss somehow---

SECRETARY WORK: Why would not that avoid a lawsuit?

MR. THATCHER: That would avoid the lawsuit. The other time the Attorney General could well say to you as a matter of opinion that the question is not entirely free from doubt, and I think he could so say, and in such event he might say that he would recommend that this litigation be settled and then you could recommend Congressional action looking toward settlement. I see no reason for such a situation of that kind coming about.

ATTORNEY GENERAL SARGENT: What do you mean by "settled"?

MR. THATCHER: Congressional action looking toward---  
The Secretary of the Interior could recommend certain congressional action looking toward the settlement of the water rights on the reservation, or something of that kind.

SECRETARY WORK: His opinion would determine it so far as I was concerned. I would proceed on that basis without Congressional interference. The Attorney General's office is the attorney for the Department of the Interior.

ATTORNEY GENERAL SARGENT: It gets right back to the proposition that this legal question ought to be determined conclusively for the sake of your clients as well as the Government, oughtn't it?

MR. THATCHER: Yes, that is to a considerable extent true. On the other hand I do not know of any decision. The decision of the United States Federal Judge for that district might not be final. The Government or some one might file its appeal to the Supreme Court of the United States. In the event that was done it is doubtful whether or not we could so arrange it unless, for instance, I suppose, that the motion to dismiss was granted. Of course upon that kind of a basis the Government could immediately go to the Supreme Court and present your question.

SECRETARY WORK: And the water organization---the white water users---have they ever consented to a stipulation with the Government on that?

MR. THATCHER: That has never been presented to them at all.

SECRETARY WORK: They never felt that they were willing to---

MR. THATCHER: I do not think it has ever been presented to them in such a way that they could say yes or no.

ATTORNEY GENERAL SARGENT: As I understand your views about it, the way the suit is now framed does not demand adjudication of this simple question without involving all the rest?

MR. THATCHER: The Government's pleadings all give such a broad scope that they can take any attitude that they want. They can take the doctrine of sovereignty; they can take the doctrine of the setting aside of the reservation carrying the water; and they can take the doctrine of appropriation if they want. That is the situation that they are in, and we can not tell. As a matter of fact we argued and asked for a statement of their case upon the argument of the motion, and we never got it.

ATTORNEY GENERAL SARGENT: Is there anybody else, Mr. Springmyer, that has any particular ideas upon this subject.

MR. SPRINGMYER: I as the United States Attorney under instructions from the Attorney General filed this bill of complaint in the first instance. That was in July, 1924. As Mr. Thatcher says, the bill of complaint does claim the rights of the United States to be on all three grounds: (1) The setting aside of this reservation as an Indian reservation in 1859; (2) The right of sovereignty on the part of the United States to hold waters which are appurtenant to its public lands; and (3) By actual appropriation.

ATTORNEY GENERAL SARGENT: Now, let me ask you something;

Is there any difficulty in the way of equity practice of that court, in having the first question determined without going into the rest of the case and having it finally determined.

MR. SPRINGMYER: Defendants filed the motion to dismiss.

ATTORNEY GENERAL SARGENT: That is not what I am asking you about---the present situation of the pleadings. Is there any difficulty of having that done?

MR. SPRINGMYER: I believe not, and I believe it has been peculiarly favorable to the position of the Government in that the court overruled the motion of the defendants to dismiss.

ATTORNEY GENERAL SARGENT: Well?

MR. SPRINGMYER: It has already been settled to that extent that the United States Government---

ATTORNEY GENERAL SARGENT: But that would involve---the overruling of the motion to dismiss would involve a determining of the Government's right, and perhaps the other two grounds also, wouldn't it? That is, if it had a right under any one of them the bill could not be dismissed?

MR. SPRINGMYER: That is true, except for the fact that there were suggestions made by one of the attorneys for the defendant on a motion to strike upon which the court ruled unfavorable to the defendants, which leads us to conclude that the court agreed that all three positions were sound.

ATTORNEY GENERAL SARGENT: You think that was the court's view?

MR. SPRINGMYER: Yes, sir.

ATTORNEY GENERAL SARGENT: That was not determined that it was sound on all three by the overruling of the motion to dismiss.

MR. SPRINGMYER: Not on that motion, but on the motion to strike it was, however.

ATTORNEY GENERAL SARGENT: That has not got into the form of a final decree, that particular ruling?

MR. SPRINGMYER: No, sir; it has not.

ATTORNEY GENERAL SARGENT: Is there any reason why the thing can not be so limited as to bring about a determination of that question?

MR. SPRINGMYER: Separately from the trial?

ATTORNEY GENERAL SARGENT: Yes.

MR. SPRINGMYER: I do not believe under equity procedure anything can be done as to taking it to another court or as to any further decision by the lower court until after trial.

SECRETARY WORK: Supposing I would submit this question to the Attorney General, as proposed a moment ago, would you representatives of the districts---would you be satisfied with his ruling on it---providing it went against you, of course?

ATTORNEY GENERAL SARGENT: Of course not.

SECRETARY WORK: The Attorney General has answered for you.

ATTORNEY GENERAL SARGENT: I said, "Of course not".

SECRETARY WORK: I am looking for final authority somewhere.

ATTORNEY GENERAL SARGENT: Well, what is the difficulty, Mr. Springmyer, in so shaping this suit that the question which apparently everybody regards as lying at the foundation of the thing can be determined and the balance of the suit preserved for settlement or trial or any other purpose; that this vital question which lies at the bottom of everything, why can not it be determined for all of us without the lawsuit involving a great deal of labor?

MR. SPRINGMYER: No difficulty, except that when the United States makes a claim it must assert all of its rights. We had to set up all the grounds where the United States claimed---

ATTORNEY GENERAL SARGENT: Grant you that. Why can not part of the case be finally determined and the rest of it reserved, like a pure question of law?

MR. SPRINGMYER: As to the facts I think nearly all is determined by this bill of complaint, because in the bill of complaint as finally amended they have set out that the Government accepts the findings and the decrees of the court in this other suit.

ATTORNEY GENERAL SARGENT: You misapprehend my question. Why can not this question of whether the Government is entitled to water for 10,000 acres because of its having been made a reservation---why can not that question be determined without going into all these questions of fact and the rest of it; that is, the determination of the questions of fact, if the parties desire to litigate them, to be held in abeyance under equity

practices?

MR. SPRINGMYER: Well, I presume we would have to amend our complaint---make that the only ground upon which the complaint stands.

ATTORNEY GENERAL SARGENT: Now I am saying that suppose your complaint stands just as it is, why can not that question of law be taken alone and settled without determining the whole case?

MR. SPRINGMYER: It can be if counsel would stipulate upon that.

ATTORNEY GENERAL SARGENT: Is there any reason, Mr. Thatcher, why that can not be done?

MR. THATCHER: It seems to me it would have to be amended. It seems to me that the Government would have to set up their cause of action on one theory and stay their cause of action under another theory, and get a final determination.

ATTORNEY GENERAL SARGENT: Is it agreed that there is a way to do it?

MR. THATCHER: No trouble in finding a way.

ATTORNEY GENERAL SARGENT: What I am suggesting is that there ought to be some way of having this thing finally determined so that everybody will know what their rights are in that respect. I am asking you.

MR. SPRINGMYER: I believe that that can be done, and then action to strike filed by the defendant; but, of course, if they would not be satisfied with the trial court's---

ATTORNEY GENERAL BARGENT: I am now assuming that they would be satisfied. It is not to be one side or the other, but to have the thing so that it can be determined conclusively and everybody's rights settled in that regard. If you see any reason---I understand Mr. Thatcher says it can be done---and assuming, if you please, that it can be done, would you think it advisable or not advisable?

MR. SPRINGMYER: I think it would be advisable to settle the legal questions involved.

ATTORNEY GENERAL BARGENT: Does anybody here hold a contrary opinion? (No reply).

MR. GEORGE L. SANFORD (Attorney for the Union Live Stock & Cattle Company): There is one thing that occurs to me, however, in connection with the matter. Of course it is resolving itself into a purely legal question; but as a matter of fact suppose that the Indians got a right to so much water from 1859. I think the record will answer that---

ATTORNEY GENERAL BARGENT: What do you mean by "from 1859"?

MR. SANFORD: The 1859 water right that they contend for. Get that? I think the record will disclose still you have not sufficient water to irrigate your 10,000 acres of land.

ATTORNEY GENERAL BARGENT: They would be entitled to the whole of it.

MR. SANFORD: You could take it; you would not have enough. Even though you established your right and you get a court holding or regular verdict, you would get the verdict, but you

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would not get the water. In 1924 that was illustrated. In the year 1924 when this suit was instituted that was <sup>in</sup> a very dry year, and the court enjoined all us lower water users by temporary injunction to allow the water to flow down to the Indians at the tail end of the stream. Now, we went further than merely stopping the excess water up here, we allowed the water to accumulate and by impounding in the reservoirs we held it there for a period of five days. They held the water in these reservoirs, allowing it to accumulate on one branch of the river. The other fork of the river they allowed the water to flow towards the reservation so as to get the river bed wet. After holding the water for five days they turned it loose, going down with a rush—as great a volume as we could possibly get; it did not reach the reservation. In other words, if the Indians had it all they would not have water probably later than the 15th of 20th of July in any season.

SECRETARY WORK: They would have more than if they only had a part of it.

MR. SANFORD: That would mean a loss altogether. What I have in mind, Mr. Secretary, is that it would mean an economic loss, whereas at the present time the ranchers on the upper stream could utilize the water and use it over and over again, when if the water was allowed to continue on down toward the reservation (the reservation being some 15 or 20 miles below the lowest white users), it would be lost through the sands. In other words, grant it all, you would get an empty verdict.

It won't work out practically.

ATTORNEY GENERAL SARGENT: Occasionally.

MR. SANFORD: More than occasionally; it is simply a situation, and this is the only solution that we can see and the only thing that our engineers can see: If they can put in a reservoir---

SECRETARY WORK: No compromise agreement would change that fact that the reservoir would use all the water.

MR. SANFORD: We would see that the water went down to that reservoir. We would yield as to that. In other words, we would deny the two rights.

SECRETARY WORK: You would yield if you had to. I know something about irrigation in a dry time.

MR. SANFORD: Well, didn't they?

ATTORNEY GENERAL SARGENT: What is the next subject, Col. Dwyer, Assistant Attorney General?

MR. SANFORD: Whether it would be practicable to enter a decree as a final decree on part of the suit so that we could get a final determination on appeal. I think that is a serious question.

ATTORNEY GENERAL SARGENT: Didn't you ever hear of a court in equity going ahead to try out the law questions, reserving questions of fact.

MR. SANFORD: Yes, sir.

ATTORNEY GENERAL SARGENT: What is the matter with doing that here?

MR. SANFORD: At the same time we have got to get a final appeal from the decree.

ATTORNEY GENERAL SARGENT: That is what I am saying---so that the court of last resort would determine as a guide for the rest of them. Doesn't that happen?

MR. SANFORD: It could happen, and I believe we could make it happen in this case.

ATTORNEY GENERAL SARGENT: All right. What is the next one? Some other stream under consideration?

SECRETARY WOLFE: There are two branches of the same stream.

ATTORNEY GENERAL SARGENT: I thought there was something about Carson River. Isn't there somebody that wants to stop our litigation on the Carson River.

(An Attorney): We fixed that Saturday.

MR. HENRY THURTELL: I was the Master who took the findings in the case that has been referred to by Mr. Thatcher and Mr. Springmyer. Somehow I can not sense all this. To my mind the doctrine of appropriation and use of water has been so long the guide and the rule to all these men who have lived in that irrigated country that a determination of this right to the use of water upon any other theory seems unthinkable. It is the more unthinkable to my mind that the rights of all these settlers who have made this country and made it what it is and made it habitable should be determined by one rule, but that it should be asserted as to the Government and as to the wards of the Government that their rights are to be determined by some

other rule so much more liberal than the rule which has been applied to all these settlers. I can not imagine a department of the Government seriously proposing any such thing.

There is a certain equity about this rule of appropriation. It is that a man may have made an appropriation in the year 1865, or any other year, and he may have diverted enough water to irrigate 100 acres of land, and he has a reasonable time in which to prepare that land for use; and although he may not for several years put under cultivation that entire 100 acres of land we will let that relate to the time when he first began---for what is considered a reasonable period; but that now at this time the fact that the Government in 1859 withdrew from public entry a tract of land for the future use of the Indians should operate in such a way as that now it could be said that the Government then reserved for the use of those Indians rights of water sufficient to irrigate that entire tract of land---10,000 acres or any other tract---and the settlers might not use it, just think what that means on these little streams where there has been a struggle all along to get water enough to irrigate their crops. Do you think what that means to a tract of land and a set of settlers who have built up their properties and have made the country, to assert against them now a right to sufficient water with priority to water 10,000 acres of land at the bottom of that stream? Are you aware that it would cost twice as much in water to water 10,000 acres of land at the bottom of that stream as it would on the Smith Valley and Antelope Valley? You

know that the river is bound to waste. To turn on sufficient water to water 10,000 acres of land where that Indian reservation is situated is sufficient water to irrigate 20,000 acres of land in Antelope Valley or in Smith Valley. I should think---

ATTORNEY GENERAL SARGENT: Let me ask you a question. The real question here is first whether or not more construction shall be done to further conserve the waters of the stream, isn't it? That is what all this is aimed at.

MR. THURTELL: That is one question; but it has been scantily discussed.

ATTORNEY GENERAL SARGENT: It is not the question here, we are not considering that; but that is what the thing is aimed at. I suppose you all understand that with the expenditure of \$150,000 there can be water enough for the Indians and the other people too. I understand that to be the situation.

MR. THURTELL: Yes, sir; I understand it.

ATTORNEY GENERAL SARGENT: Well, now, that is the real question. Well now, the next question is who is going to pay for that---who is going to expend that? Isn't it?

MR. THURTELL: Yes, sir.

ATTORNEY GENERAL SARGENT: Well, now, when we get past that we want to determine that question: Has the view that the water goes along with the land that the Indians have for irrigating the whole of their land been sustained in some courts?

MR. THURTELL: It may have been sustained in some courts.

ATTORNEY GENERAL SARGENT: Well, has it been overruled after being so sustained?

MR. THURTELL: I do not know whether there has been an opportunity for that.

ATTORNEY GENERAL SARGENT: What do you mean by that?

MR. THURTELL: As to that question. Understand I have been out of this business for 15 years or more.

ATTORNEY GENERAL SARGENT: I understood from somebody else---

MR. THURTELL: That a gentleman invited me to come here.

ATTORNEY GENERAL SARGENT: You will please assume that the doctrine that enough water to irrigate--properly irrigate the Indian's reservation goes with the land as far as the reservation is an Indian reservation---that that doctrine has been advanced and upheld in some courts, so that at least is a respectable doctrine from the court point of view. If that is so, should not that question be determined here before the question of who is going to do the further things is determined on?

MR. THURTELL: Possibly so, Mr. Attorney General. However, there may possibly be rights which the Government may assert as against its own citizens. I may have a right to some of my child's wages; I do not assert it. If there is a right in the Government to hold that water I should be very sorry to be in a position of the representative of the Government who is called upon to assert that right, because I should consider it a most questionable affair.

ATTORNEY GENERAL SARGENT: The question of the right's equity or inequity must necessarily be considered in such a suit, mustn't it?

MR. THURTELL: No doubt.

ATTORNEY GENERAL SARGENT: And be considered by the court. All right. Was there something further?

MR. THURTELL: That is all.

ATTORNEY GENERAL SARGENT: Is there anything further to clarify the situation that you want to know? Is there somebody here---some lawyer---representing the people in California on this same stream? It has been said that there are two interests here---these Nevada people in this valley and some people in California. Do you represent both of them? (Addressing Mr. Sanford).

MR. SANFORD: I think our rights are adjudicated in California. We represent some of the people in California as well as Nevada.

ATTORNEY GENERAL SARGENT: Well, I understood that. But does this same situation as to the determination of what the rights of the Indian lands are apply to your people as it does to them?

MR. SANFORD: Yes, sir. Of course in California there is also the riparian theory of the water use, and it is not appropriation. In California we have the riparian doctrine, so that may be---

ATTORNEY GENERAL SARGENT: What is the riparian doctrine?



MR. SANFORD: That you have the right to the use of the water upon land adjacent to the stream within a reasonable distance---the undiminished use of the water.

ASSISTANT SECRETARY FINNEY: You have a mixed doctrine in California; you recognize both?

MR. SANFORD: Yes, we recognize both.

ATTORNEY GENERAL SARGENT: That is not what we people in the East speak of as riparian rights to the use of water. That is a different proposition.

MR. SANFORD: Well, we use it for irrigation under that doctrine.

ATTORNEY GENERAL SARGENT: You use it in a way that diminishes the flow of the stream.

MR. SANFORD: We use it for power.

AN ATTORNEY: Have those rights of the Californians been determined?

MR. SANFORD: As to about 20,000 acres as between ourselves and as against the Nevada people.

ATTORNEY GENERAL SARGENT: Do you have local State machinery in California for the administration of this water business?

MR. SANFORD: Yes, there is a Division of Water Rights.

ATTORNEY GENERAL SARGENT: Are not they the same as in Nevada?

MR. SANFORD: Yes, there is a State Engineer in Nevada, and they call it the Division of Water Rights in California---local machinery.



ATTORNEY GENERAL SARGENT: What do you do when the rights of the California people and the rights of the Nevada people conflict?

MR. SANFORD: Well, there is one decision upon that, the Anderson Basin, which was never appealed. They did not recognize any subdivisions between the States, but they still recognized the doctrine of the riparian theory and the right of the California users. I do not think the question has ever gone up.

ATTORNEY GENERAL SARGENT: So that question is still open?

AN ATTORNEY: That question has still to be decided between the Californians and the people in Nevada.

MR. SANFORD: I think in this particular suit, and if we can settle with the Indians, the parties can settle priorities.

ATTORNEY GENERAL SARGENT: By contract?

MR. SANFORD: By agreements between the parties---by stipulation.

AN ATTORNEY: That is a contract.

ATTORNEY GENERAL SARGENT: Is there anything anybody else wants to say to us?

MR. SPRINGMYER: Shall I suggest this?

ATTORNEY GENERAL SARGENT: Yes.

MR. SPRINGMYER: That if the attorneys for the defendant and the attorneys for the Government stipulate that the questions of law can be passed on by the local courts and taken up to the higher court while the questions of fact remain undecided---

ATTORNEY GENERAL SARGENT: Held in abeyance.

SECRETARY WORK: Without more expense.

MR. SPRINGMYER: Without any expense.

ATTORNEY GENERAL SARGENT: I had the idea it could be.

MR. SPRINGMYER: I am satisfied it can be by stipulation---  
and the question of fact so far as the United States are concerned,  
and of these other defendants if the position of the Government  
is sustained in whole or in part. The evidence on the part of  
the Government does not take long to present. The facts are very  
brief.

ATTORNEY GENERAL SARGENT: You mean if it becomes necessary  
to try out the questions of fact?

MR. SPRINGMYER: Yes. And the rights on the part of the  
defendants, I believe, who are not accepted as being set out  
in this decree to which reference has been made may also be  
stipulated with the defendants themselves. They have all so  
indicated. So there should not be any long litigation or  
expensive litigation except in so far as it applies to these  
moot questions of law.

(Mr. Arantz rose to speak).

ATTORNEY GENERAL SARGENT: Well, Mr. Congressman?

MR. ARENTZ: I just want to ask if you will tell me what  
has been accomplished. I will state it as I see it.

ATTORNEY GENERAL SARGENT: What has been accomplished, as  
I understand it, is that counsel agrees that this question of  
the Indians' rights can be determined as a question of law  
without going into all this great trial of questions of fact.

I think they all agreed to it.

MR. ARETZ: In other words, instead of taking up three basic questions you take up whether in 1859 when there was a setting aside of 10,000 acres of land, the water right went with the reservation.

ATTORNEY GENERAL SARGENT: You would like to have that determined before you vote on this question?

MR. ARETZ: I would like to have it determined, of course, but I really would have liked to see something else determined here, but if it can not be determined I would like it to remain in abeyance.

ATTORNEY GENERAL SARGENT: What is the something else?

MR. ARETZ: Agree that the 2,000 acres has sufficient amount of water.

ATTORNEY GENERAL SARGENT: Oh!

MR. ARETZ: That you are not making a half promise but you are going to give the Indians something that they deserve to have.

ATTORNEY GENERAL SARGENT: Let me ask you this: If you were in the shoes of the Secretary of the Interior would you want to give away---that is, yield up---some legal right that the Government and the Indians have without---

MR. ARETZ: I appreciate his position.

ATTORNEY GENERAL SARGENT: You don't answer my question. Would you?

MR. ARETZ: No, I do not believe I would.

ATTORNEY GENERAL SARGENT: If you were in my place would you want to advise yielding up the claims that the Government has without having it determined in court?

MR. ARETZ: Well, I guess you are right on that point too.

ATTORNEY GENERAL SARGENT: All right.

MR. ARETZ: But I think possibly something has been accomplished, I hope.

ATTORNEY GENERAL SARGENT: A great deal has been accomplished.

(At this point the conference  
adjourned).